

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38044

Docket No. MS-38321

06-3-04-3-253

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Carole LaSota

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Ms. LaSota applied for a Foreman’s General 2 position with Union Pacific Railroad Company (hereafter “Respondent”) posted January 16, 2003. Shortly thereafter, she was denied the opportunity to interview for said position. Respondent stated the reason Ms. LaSota was denied the opportunity to interview was that she did not meet the required prerequisites. The above stated reason is merely a pretext. The true reason Ms. LaSota was denied the opportunity to interview is due to discrimination. Ms. LaSota met the prerequisites stated on the January 16, 2004 job posting to warrant an interview for the Foreman General 2 position.

The question on which an award is desired is whether Ms. LaSota was denied the equal opportunity for advancement when she was denied the opportunity to interview for the Foreman General 2 position.

The remedy sought is pay from March 1, 2003, the date the position was awarded to another employee, and appointment of Ms. LaSota to a Foreman General 2 position or equivalent position.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant in this case is Chief Clerk Carole LaSota. The essence of LaSota's claim stated above from her attorney's letter of June 2, 2004 is denial of equal opportunity for advancement. The case involves the Claimant's attempt to advance to the Foreman General 2 position posted January 16, 2003 for which she applied. Following application, the Claimant was not given an interview for the position, which was later awarded to another applicant. The Claimant requested an Unjust Treatment Hearing that was held on March 10, 2003. The Carrier denied any unjust treatment or violation of the Agreement.

The Claimant argues that the Carrier failed to provide equal opportunity for advancement when it failed at numerous junctures to properly act. The Carrier failed to grant the Claimant an interview for the Foreman General 2 position. The Carrier failed to bulletin any requirements for the position or provide any knowledge of needed skills. The Carrier failed to permit preparation through testing or background by providing "technical" training for Foreman General positions. The Claimant maintains throughout this dispute that she was equal or above the qualifications of any applicant and was denied opportunity for advancement or even interview prior to rejection.

We considered with care Ms. LaSota's position before the Board, but note on-property no Agreement violation. The Board is constituted for appellate review of alleged Rule violations by the Carrier. The Carrier noted on the property that Foreman General 2 positions were established by Agreement with the American Railway and Airway Supervisors Association. Our reading of that Agreement confirms that the Carrier fills such positions "on the basis of qualifications and fitness, management to be the judge." (Section 3) Further, the Agreement states that Foreman General 2 positions "will be filled by appointment." (Section 4)

The Board finds that the Carrier has the Agreement right to determine selection. The Claimant has no demand right for the position. The Board notes that while she is a 34-year clerical employee with an exceptional employment record, the Carrier did not violate any Agreement Rule. As the Carrier stated, the Claimant was "one of eight applicants that did not get interviewed." The Carrier further stated:

"In order to be promoted to a supervisor in the Mechanical Department, it is reasonable to expect the employee to have experience in the work that he or she is going to supervise. You currently do not meet this very basic, reasonable requirement."

The Board can find no violation. We note that while the Transportation Communications International Union attempted to effectuate a promotion for the Claimant, it had no Agreement right and was unable to secure consideration from the Carrier. The Carrier stated that the Claimant's past education and training did not come close to the requirements it sought and denied advancement to this position.

While the Claimant has the right to other routes for conflict resolution, there is nothing within this on-property record that would permit the Board to determine a Carrier violation. A reading of the Unjust Treatment Hearing record does not demonstrate any Rule violation. Whether the Carrier is fair or unfair in its procedure or selection, it has the Agreement right to make the decision for the Foreman General 2 position. The Claimant stated that "I never alleged this was a contractual violation" and indeed it was not, restraining the Board from any conclusion other than the claim at bar must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of December 2006.